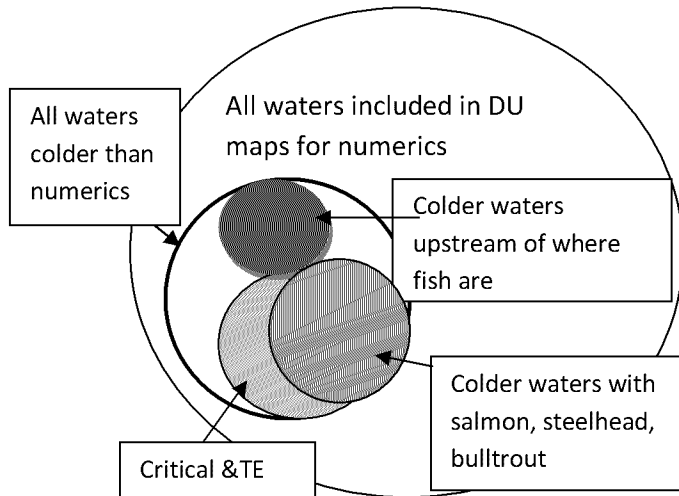
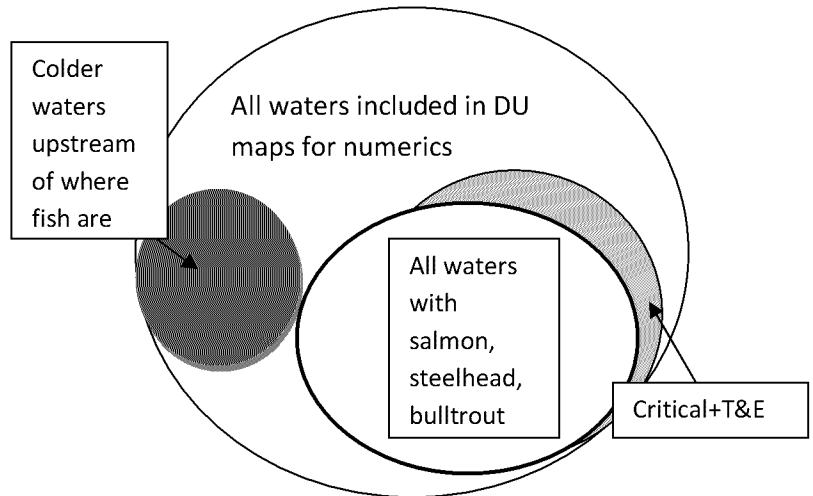


Oregon's Designated Uses and implementation of protecting cold water designated uses vs. the riparian rule mapping:

*Protecting cold water*



*ODEQ application of riparian rules (per conversation w/ODEQ)*



Questions from the Board of Forestry that are in EPA's purview or have a nexus to EPA's purview:

1. What is the biological basis of the PCW standard?
2. What are the respective authorities/obligations on the issue of forest management and protecting water quality?
3. How do ODF and DEQ identify the geographic extent of the Protecting Coldwater Criterion, including where throughout the state (including eastern Oregon) the PCW standard is in force? How far upstream of reaches covered by the PCW standard should any riparian rule be applied to ensure we're not sabotaging our ability to meet the standard? Is the concept of drafting the rule keyed on where the PCW standard has been established a legally defensible approach to meeting our Clean Water Act obligations?
4. Does this riparian rule process relate to the NOAA/EPA proposal to disapprove the State of Oregon's coastal nonpoint pollution control program, if so, how?

1. Ans: EPA can provide an overview of the scientific basis of the PCW and the rest of the temperature water quality standard. The goals of the Clean Water Act are to protect and restore our nation's waters. Briefly, OR's temperature standard was derived from EPA's Pacific Northwest Temperature Guidance (2003). This Guidance, in turn, was based upon 100's of studies on salmonid life stages' biological thresholds for temperature—where injury and mortality are prevented in the target organism. Biologically-based pollutant criteria, including the temperature criteria, are chosen to be protective of the defined uses for the streams; in this case, to support a aquatic life- fish. It does not make sense to choose criteria that do not protect the use or result in unacceptable mortality or injury to the use such that the goal cannot be achieved. The temperature criteria identified in the guidance and adopted by Oregon work together to encompass the thermal complexity of streams. While the numeric criteria are from the upper ends

of the ranges found to be protective of the aquatic life uses, the protecting cold water narrative, and other narratives, enable such criteria to be fully protective, since fish are reliant on cold water areas ('refuges') for maintaining a healthy life cycle, and together, the criteria protect the bulk stream temperatures from being too warm in the short and long term, so that fish can survive, but the colder waters enable the population as a whole to not only survive but to be self-propagating. We can also point out the fact that where the PCW criterion applies, that water is critical for maintaining ambient temperatures further downstream; the downstream waters will be further impaired or degraded if that upstream water is not maintained at close to its existing temperature. Further, there is much scientific evidence that protecting from the start results in much fewer overall costs than trying to restore those waters once degraded. An analogy is to preventive dentistry – it is much more costly and unhealthy to simply wait until teeth rot and try to fix them at that point than conducting regular maintenance and preventive measures such as cleanings, and avoiding sugary foods, that will maintain them in a healthy state. It is similar with protecting colder waters. We commend OR for using published and peer reviewed scientific data in guiding the application of its nonpoint source rules and BMPS. We feel OR's application of the riparian rules is to the highest priority areas; however, we encourage OR to consider applying the rules more broadly to ensure restoration and protection of aquatic life.

2. ans. Water quality standards apply to the waterbody, not the regulated source. In terms of ensuring compliance with WQS, OR has the authority to regulate NPS in their state statutes, and ODEQ, in particular, has the authority to enforce the laws on OR's books. [something need to add that OR use sound science in making decisions about achieving WQS?]. Have to protect existing uses (add?).
3. Per Oregon's approved rule language that is in effect for CWA purposes, the PCW applies where T&E species are present; areas upstream of where T&E species are present, and where critical habitat is present. There is no map currently adopted into standards – it is a narrative use. The other temperature criteria apply to the designated use maps adopted into Oregon regulations. There are year-round fish uses as well as spawning use maps for criteria that apply for specific times of year. There are typically two maps per basin unless no salmonid uses occur in a particular basin. Other aquatic life, beyond salmonids, are sensitive to temperature, however, OR identified salmonids as the most sensitive to temperature, and so salmonids (salmon, steelhead, trout, and bull trout) comprise the use that is designated in the maps for OR waters. The other aspects of water quality standards that are relevant include OR's antidegradation policy in effect for Clean Water Act purposes. Before any degradation of a waterbody with water quality that is better than the criteria is allowed, federal regulations state that, "the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control." Further, under the federal regulations, any degradation that is allowed must still provide water quality sufficient to protect existing uses fully.

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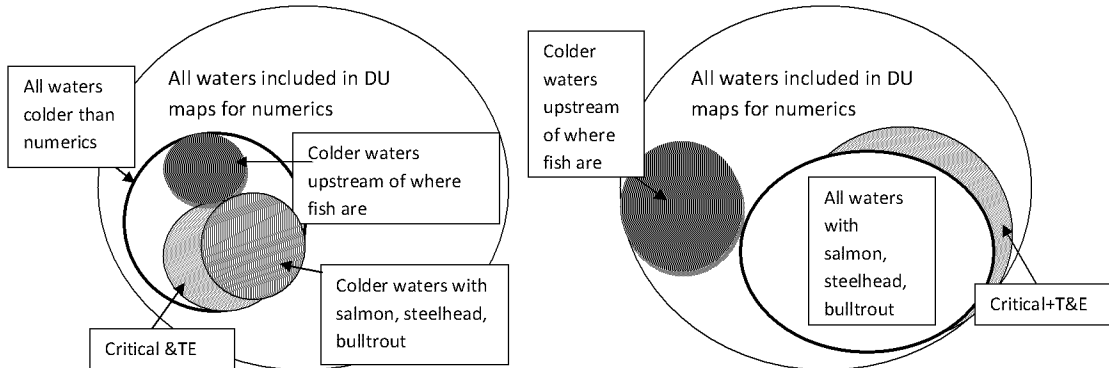
4. Jenny respond to CZARA linkage.

Attorney-client privileged, draft-deliberative

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Comment [R1]: Bring copies

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**Comment [R2]:** I am not speaking to where colder than since it is implicit in the name of the narrative

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